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DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0666

**Individual Income Tax
For The Tax Period: 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Individual Income Tax – Overpayment Carry-Forward

Authority: IC 6-8.1-9-3, IC 6-3-4-4.1, 45 IAC 15-6-3, Information Bulletin #3.

The Taxpayer protests the Department's refusal to apply a 1996 individual income tax overpayment originally requested by the Taxpayer to be carried over as a first quarter estimated payment for 1997 as payment for the amount due on the 1996 amended return.

II. Tax Administration – Interest

Authority: IC 6-8.1-1-10-1.

The Taxpayer protests assessed interest.

III. Tax Administration – Penalty

Authority: : IC 6-7-3-11, IAC 15-11-2 (c).

The Taxpayer protests assessed penalty.

STATEMENT OF FACTS

The Taxpayers filed their 1996 individual income tax return (IT-40), which was postmarked October 15, 1997. On the IT-40, the taxpayer requested that their overpayment be carried forward as a 1997 estimated payment. The taxpayer then filed an Amended Indiana Income Tax

Return (IT-40X), postmarked January 29, 1998. The taxpayer reported an amount due on the IT-40X and attached a written request that part of the 1996 overpayment from the original return, which was carried forward, be applied to pay the balance due on the 1996 amended return. This was not done and a notice was issued for the total amount due on the amended return plus penalty and interest.

I. **Individual Income Tax**: Overpayment Carry-Forward

DISCUSSION

The Taxpayer requests that the amount due on the 1996 amended return be credited from the amount the Taxpayer requested to be carried forward as a 1997 estimated payment on their original 1996 IT-40.

Pursuant to IC 6-8.1-9-3, “the Department shall either refund the overpayment to the taxpayer or, at the person’s request, credit the amount to the person’s future tax”. The payment amount requested to be carried forward to the next year will be considered to be paid on the postmark date of the tax return. Therefore, once the amount has been carried forward, it is treated as if it were a refund and is no longer contained within the original period and, thus, cannot be credited.

For example, if the Taxpayer was refunded the overpayment, there would be nothing to apply to the balance due on the amended return. Similarly, after an overpayment is applied to the next year, there is nothing to credit the amount due on the amended return. Once the payment has been forwarded to the succeeding year, credit is given as a normal estimated quarterly payment for that tax period and cannot be altered. Information Bulletin #3 states: “While an installment payment cannot be changed once it has been made, future payments can be adjusted to reflect a change in the annual estimated tax due.” Thus, the Department is unable to credit the amount due on the 1996 amended return with an amount carried forward as a first quarter estimated payment for 1997.

FINDING

The Taxpayer’s protest is respectfully denied.

II. **Tax Administration – Interest**

DISCUSSION

The Taxpayer requests the abatement of interest on the proposed assessment. The Taxpayer claims that any tax due was not the result of evasive action but resulted from a misunderstanding of the Department’s procedures for crediting an amount due on amended returns. However, IC 6-8.1-10-1 does not allow the department to waive interest, therefore, the balance is due and owing. The Taxpayer must remit the interest on the proposed assessment.

FINDING

The Taxpayer's protest is denied.

III. **Tax Administration – Penalty**

DISCUSSION

The Taxpayer requests that the Department waive the 10% penalty. Pursuant to Indiana Code section 6-8.1-10-2.1, the Department may waive the penalty upon the taxpayer's affirmative showing of a reasonable cause for the failure to pay the proper tax. 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayer must show that they "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. . . ."

The Taxpayer submitted a copy of the amended return to verify their request to have the amount originally carried over to the 1997 tax period applied to the amount due on the 1996 amended return. The Taxpayer contends he had reasonable cause to believe the amount due on the amended return could be credited from the overpayment of the original return.

The Department finds the taxpayer had a reasonable cause to believe that an overpayment carried over as a first quarter estimated payment on the succeeding year could be credited back if an amended return showed a balance due. The Taxpayer exercised ordinary business care and prudence to credit the amount due on the amended return.

FINDING

The Taxpayer's protest is sustained.